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November 10, 2014

David Webber, Chair and Members of the Amherst Planning Board  
Town of Amherst  
Town Hall  
4 Boltwood Avenue  
Amherst, MA 01002

Re: Archipelago Investments, LLC; One East Pleasant Street Special Permit Applications

Dear Chair and Board Members:

Please be advised that this office represents Joel Greenbaum, and other interested parties in the above captioned matter. Enclosed please find on behalf of my clients our position statement to the Planning Board regarding the Project.

I apologize for not being in attendance in person at your hearing to present the position statement. I have been called to a Special Town Meeting for one of my municipal clients on November 12<sup>th</sup>. The Town did not realize they would need me to attend until last week.

I want to thank you in advance for your time and attention to this matter.

Sincerely,



Donna L. MacNicol

Enclosures

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To: David Webber, Chair and Members of the Town of Amherst Planning Board  
From: Donna L. MacNicol  
Re: Archipelago Investments, LLC development at 1 East Pleasant Street, Amherst  
Date: November 5, 2014

Archipelago Investments, LLC (hereinafter the “Developer”) has proposed a mixed-use housing project of approximately 100,000 square feet at 1 East Pleasant Street with 84 dwelling units and 6040 square feet of retail space in a commercial/retail area of downtown Amherst (hereinafter the “Project”). The Project Developers are requesting two special permits from the Planning Board: first, to be allowed to exceed the maximum height requirement of the Amherst Zoning Bylaws for the B-G District; and, second, to be allowed to reduce the required side and rear lot setback requirements of the Amherst Zoning Bylaws. Furthermore, the Project does not include any affordable housing units pursuant to Article 15 of the Amherst Zoning Bylaw.

**Affordable Housing Units, Article 15”**

The Developer does not propose any affordable housing units for the Project. It has been argued that, because the Project is mixed-use and requires only dimensional special permits, Article 15 does not apply. It is also argued that Section 15.10, which states: “All residential development requiring a Special Permit and resulting in additional new dwelling units shall provide affordable housing units ...,” applies only to special permits for use, and not to special permits for dimensional modifications.

However, nowhere in Section 15.10 does it state that dimensional special permits requests are excluded. Special Permits are intended to provide detailed review of certain Uses and Structures which may have substantial impact on traffic, utility systems, and the character of the Town among other things. Amherst Zoning Bylaw, Section 10.3. The Project is such a structure, which will have substantial impact on the character of the Town. Therefore, it cannot be argued that a special permit for a taller structure than allowed or one without the required rear and side yards is exempt from Article 15.



The Planning Board report on proposed zoning bylaw Article 15 to the Annual Town Meeting of April, 2005 explained why only special permit developments were included in the requirements of Article 15. It had nothing to do with the use of the property as opposed to dimensional waivers. The reason the Planning Board proposed that only those properties which required special permits comply with Article 15 was because the Planning Board wanted to avoid any court challenge that would argue that the Town was taking the property for public use without just compensation.

Apartment developments, which under the Amherst Zoning Bylaw need a special permit and are limited to 3 to 24 units per building were made subject to the requirements of Article 15. No retail/commercial space or unit limitations apply to mixed-use projects, which require only site plan review approval. Under the interpretation of Article 15 argued by town counsel, all an applicant who needs special permitted dimensional modifications has to do to avoid the affordable housing provisions of Article 15 and the unit limitations of the Zoning Bylaw's Section 3.323 is to include a minimal amount of retail space in any apartment building proposed. This surely was not the intent of town meeting in adopting these additions to the Amherst Zoning Bylaw. "The Court's primary task is to determine the legislative intent of the town meeting that enacted the provision." Board of Appeals of Hanover v. Hous. Appeals Comm., 363 Mass 339 (1973). Clearly the intent of Town Meeting was to require large apartment developments to include affordable housing units within the development. (See Exhibit A attached hereto, Planning Board Report to Town Meeting, Inclusionary Zoning, dated April, 2005.)

## **Special Permit Requests**

### **Modification of the Side and Rear Yard Setbacks.**

The Developer is requesting a special permit to waive the requirement pursuant to Section 6.15 of the Amherst Zoning Bylaw that states in part: "In the General Business (B-G) and Light Industrial (LI) districts, minimum side yards **shall** be at least 20 feet when adjoining a residence district. ..."

Table 3 of the Zoning Bylaw requires 10 feet for minimum side and rear yards in the B-G district. This 10-foot requirement is modifiable by footnotes "a" and "e", and there is no further modification of footnote "e" by footnote "a" in Table 3. "It is a general rule of statutory, as well as grammatical, construction that a clause is construed to modify only the last antecedent ..." Baldiga V. Board of Appeals of Uxbridge, 395 Mass. 829 (1985).

The side and rear yard requirements are subject to both footnotes "g" and "e". The Bylaw is clear that while the 10 foot requirement is modifiable, footnote "e" is mandatory because it states "**shall** be at least 20 feet" with no reference to an exception by special permit, and further states that footnote "g" also applies. "g" references Section 6.15, which also states minimum side yards **shall** be at least 20 feet ...". It is footnotes "e" and "g" which require the 20-foot minimum for B-G projects abutting a residence district. "The meaning of words used, but not defined in the ordinance or bylaw, are determined according to the common and approved usages of the language." Jackson v. Building Inspector of Brockton, 351 Mass. 472 (1966).

The Project abuts a residential district. Neither the Bylaw nor Table 3 state anywhere that footnote “a” modifies footnote “e” or the requirement in Section 6.15. The Bylaw would need to state in footnote “e” that it is modifiable by footnote “a” for the applicant to be eligible for a special permit rear and side yard modifications. This it does not do.

“Requirements of one section of a zoning bylaw may not be ignored by reason of another section unless strictly necessary.” Yankee Advertising Co. v. Outdoor Advertising Board, 18 Mass.App. Ct. 225 (1984). The requirements of footnote “e” and Section 6.15 cannot be ignored.

The Developer would need a variance – clearly not permissible for this parcel - in order to be permitted to have a side or rear yard setback less than 20 feet. Thus, this Special Permit request should be denied based on the clear meaning of the Amherst Zoning Bylaw. (See Exhibit B, attached hereto, letter to Planning Board from Hilda B. Greenbaum, Ph.D.)

### **Modification of B-G Zoning District Height Limitation.**

The second special permit application submitted by the Developer requests that the Planning Board grant a special permit to allow the building to be 60’ in height. The Zoning Bylaw sets the height of buildings in the B-G district at 55’. This is modifiable by footnote “a”, but must be in harmony with the existing terrain and to the use, scale and architecture of existing buildings.

This huge 60’ high, approximately 100,000 square foot structure will abut property zoned residential and the beautiful West Cemetery, the last resting place of Emily Dickinson and a National Historic Register Site. It is directly across the street from Kendrick Park. The surrounding structures are one and two story residential and retail establishments.

The Project would displace approximately 15,000 square feet of retail space with approximately 100,000 square feet of student-housing. It has no amenities, minimal landscaping, essentially no parking (maximum occupation 304 person, 36 parking spaces), insufficient waste disposal provisions and space, no provision for student move in and move out dates to name but a few issues. This Project fails to meet even the minimum needs of the tenants it purports to service much less the surrounding community of Amherst.

Out of the seventeen tallest buildings in Amherst, only four exceed this maximum height restriction. All of the tall buildings in the vicinity of the Project are spaced out so that a tall building wall is not created on any streetscape.

This Project would dramatically change the look of the north end of downtown and not be in harmony as to scale, use or architecture with the remaining properties in the vicinity. (See Exhibit C, attached hereto, a list of the tallest buildings in Amherst and a map designating their locations; See Exhibit D, attached hereto, letter to the Planning Board from Vincent O’Connor detailing current retail space, dated September 29, 2014; and See Exhibit E, attached hereto, letter to the Planning Board from Vincent O’Connor detailing probable occupancy of the Project, dated September 26, 2014.)



Special Permits are intended to provide detailed review of certain Uses and Structures which may have substantial impact on traffic, utility systems, and the character of the Town among other things. The Special Permit review process is intended to insure a harmonious relationship between proposed development and its surroundings and insure that proposals are consistent with the purpose and intent of this By-law. (Town of Amherst, Zoning Bylaws, Section 10.3.)

The purpose and intent of the Bylaw is to promote the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst and to encourage the most appropriate use of land throughout Amherst. (Town of Amherst, Zoning Bylaws, Article I.)

A detailed review of the mixed-use housing Project at 1 East Pleasant Street proposed by the Developer clearly demonstrates that this Project will have substantial negative impacts on the Town of Amherst and is not in harmony with its surroundings nor with the purpose and intent of the Bylaw. For each instance of negative impact and disharmony, granting the special permit request for a modification of the B-G height limitation would make things worse.

As detailed below, because the request for a modification of the B-G Zoning District's already generous height limitation does not meet the special permit criteria, it must be denied.

Section 10.38 of the Amherst Zoning Bylaw authorizes the granting of a special permit if Section 10.3 is met and the Authority finds:

10.380 The proposal is suitably located in the neighborhood in which it is proposed and/or the total Town, as deemed appropriate by the Special Permit Granting Authority.

**The Project does not meet these criteria. As stated the Project is not suitably located in the neighborhood in which it is proposed. The neighborhood currently is a commercial/retail neighborhood with one and two story structures. It abuts a beautiful park and an historic cemetery. An approximately 100,000 square foot residential structure in the middle of this area, right on East Pleasant Street, and removing a net 15,000 square feet of retail space will significantly alter this section of downtown Amherst. Essentially, this structure will turn this area of Amherst into a student-housing neighborhood.**

**Pedestrians walking north from the south end of Town will have no reason to continue proceeding into this section of Town past Kendrick Park and the Cemetery. There will be nothing but student housing there if this project is built. The remaining retail establishments are not sufficient to draw shoppers into this area of Amherst. There will be no parking. Essentially a beautiful mixed-use area of downtown will be turned into primarily a student housing section of downtown.**

10.381 The proposal is compatible with existing Uses and other Uses permitted by right in the same District.

**See above, clearly the Project is not compatible with the existing Uses. In fact, this project is so large that it will essentially eliminate the existing uses, especially retail uses in this area of Town.**

10.382 The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features.

**The structure would be visibly offensive to the park and the cemetery. The scale of the structure to the surroundings regardless of how well designed will not fit in with the neighborhood.**

10.384 Adequate and appropriate facilities would be provided for the proper operation of the proposed use.

**There are not adequate and appropriate facilities for the proper operation of the proposed use. Even if only half of the residents of this 84 dwelling unit structure were students, the facility does not provide adequate move in and move out space. Anyone who has been on the U/Mass campus during dorm move in time and seen the police directing traffic, family cars waiting in line to unload, students waiting at the elevators knows that ONE resident loading space is inadequate. 350 square feet for trash is not adequate. 36 parking spaces are not adequate. There is essentially no loading area for the retail stores. Having delivery trucks pull up in the driveway to the parking area, park and unload should not be an acceptable loading area design for a new development. The above problems are the result when a developer attempts to cram a huge building on a lot not large enough in the middle of a downtown without parking or the required facilities. (See Exhibit F, attached hereto, letter dated October 1, 2014 to Planning Board from abutter Joel Greenbaum.)**

10.385 The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structure or site features.

**The park and cemetery are not protected. One need only review the elevation sheets submitted by the Architect and Developer to see how oversized this project is to the surrounding properties. It swamps the other properties and has minimal landscaping. It dramatically impedes the view and sight line from the cemetery and Park.**

10.386 The proposal ensures that it is in conformance with the Parking and Sign regulations of this Bylaw.

**It is not, this is clearly student housing and as such many more parking spaces are required.**

10.387 The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements.

**The retail delivery, loading and unloading proposal does not provide for convenient and safe vehicular and pedestrian movement within the site. Having delivery trucks pull up in the driveway for loading and unloading creates an unsafe traffic situation. Cars entering and exiting the parking area will not be able to see other vehicles entering from East Pleasant Street or exiting the parking area with a truck blocking the view. The trucks will need to back onto East Pleasant Street, across a sidewalk to exit the property. The sidewalk along the drive aisle may be blocked by the delivery trucks making pedestrian movement unsafe.**



10.388 The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment or use.

**As stated previously there is only one tenant loading space. This is completely inadequate for student housing. In addition, there are minimal provisions for off-street loading of goods, products, materials and equipment for the retail establishments. (Also see 10.387 above.)**

10.389 The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site and methods of drainage for surface water.

**350 square feet of space for refuse, recyclables and other wastes resulting from as many as 304 residents and 3 retail establishments are clearly not adequate.**

10.391 The proposal protects, to the extent feasible, unique or important natural, historic or scenic features.

**The cemetery and park are not protected. The light and air for these beautiful areas will be greatly diminished because of the size of this structure. The view from both of these historic and scenic properties will be greatly diminished.**

10.392 The proposal provides adequate landscaping, including the screening of adjacent residential uses, provisions of street trees, landscaped islands in the parking lot and a landscape buffer along the street frontage. When a non-residential use adjoins a residential district, an uninterrupted vegetated buffer shall, to the extent feasible, be established and maintained between buildings associated with uses under this section and the nearest residential property boundaries.

**Adequate landscaping including screening of adjacent residential uses is not provided. There is not an uninterrupted vegetated buffer between the structure and the cemetery. There is no way to screen this use from the cemetery. It is too large and will be the main view from the cemetery and the residential uses beyond. The landscaping along East Pleasant Street is essentially non-existent and the Developer proposes to use the Town right of way for any street landscaping. There is only one landscaped island in the parking area. All of this is because the Developer is proposing a structure too large for the lot and the neighborhood on this site.**

10.394 The proposal avoids, to the extent feasible, impact on steep slopes, floodplains, scenic views, grade changes and wetlands.

**As stated previously, the scenic view from the cemetery to the north end of East Pleasant Street and the view from Kendrick Park will be severely diminished by this 60'-foot tall, approximately 100,000 square foot structure.**

10.395 The proposal does not create disharmony with respect to the terrain and to the use, scale, and architecture of existing building in the vicinity which have functional or visual

relationship thereto. Within the B-G and abutting B-L districts, for any Town project within any district, the provisions of Section 3.20, Design Review, shall remain in effect.

**The scale of this building overwhelms all in its vicinity. The Architect's elevation sheets clearly demonstrate this.**

10.396 The proposal provides screening for storage areas, loading docks, dumpsters, rooftop equipment, utility buildings and similar features.

**There is little or no screening of the parking area or the building itself.**

10.397 The proposal provides adequate recreational facilities, open space and amenities for the proposed use.

**There are no recreational facilities, open space or amenities provided.**

10.398 The proposal is in harmony with the general purpose and intent of this Bylaw, and the Goals of the Master Plan.

**The Master Plan does not call for the north end of downtown to become student housing. This proposal is not in conformance with the Master Plan. Mixed retail use and housing will give way to student housing.**

#### **Site Plan Review**

The purpose of site plan review pursuant to Section 11.2 of the Amherst Zoning Bylaw is to protect the health, safety, convenience and general welfare of the inhabitants of the Town by providing for a review of plans for uses and structures which may have significant impacts, both within the site and in relation to adjacent properties and streets, on pedestrian and vehicular traffic; public services and infrastructure; environmental, unique and historic resources; abutting properties; and community needs. According to Section 11.2501, the Planning Board may deny the application for site plan review if it does not meet the requirements of Section 11.2. This Project does not meet these requirements and therefore, the Planning Board should deny the site plan review application.

Section 11.2400 The plan shall be in conformance with the Zoning Bylaw.

**As has been shown above, the plan does not meet the dimensional requirements of the Zoning Bylaw nor is it in compliance with Article 15.**

Section 11.2401 The plan shall protect Town amenities and abutting properties through minimizing detrimental or offensive actions.

**The plan does not protect Town amenities, in particular the West Cemetery and Kendrick Park; in fact, it is proposed that streetlights, street landscaping and trees along East Pleasant Street will be removed.**

Section 11.2402 The plan shall protect abutting properties from detrimental site characteristics resulting from the proposed use, including but not limited to air and water



pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features.

**The plan does not protect abutting properties from visually offensive site features. As has been argued above, this large structure will materially negatively impact the view and open space environs of this section of East Pleasant Street, the West Cemetery and Kendrick Park.**

Section 11.2403 The plan shall provide for adequate recreational facilities, open space and amenities.

**The plan does not provide for any of these components. Kendrick Park is not part of the plan but rather a town amenity that will be severely impacted by this Project. The Project dramatically reduces the open space in this section of downtown and diminishes the interconnectedness of the open space in this area by placing a massive structure between the current open space parcels. As stated above, the Project is sorely lacking in on-site amenities.**

Section 11.2410 The plan shall protect unique or important natural, historic or scenic features.

**The plan does not protect the unique features of this section of East Pleasant Street. It dramatically changes the view, sense of openness and site line for West Cemetery. It does the same for Kendrick Park.**

Section 11.2411 The plan shall have an adequate proposed method of refuse disposal.

**There are not sufficient refuse disposal provisions for an apartment building of 84 dwellings units and three retail stores.**

Section 11.2414 The plan shall provide for landscaping, including the screening of adjacent residential uses, provision of street trees, landscape islands in the parking lot and a landscape buffer along the street frontage. When a non-residential use adjoins a residential district, an uninterrupted vegetated buffer shall, to the extent feasible, be established and maintained between buildings associated with uses under this section and the nearest residential property boundary.

**The plan does not provide for any of this landscaping and screening. This is essentially the problem with placing an enormous structure of this size on a lot that is too small for the structure. The purpose of zoning provisions such as these are to create green space, screen commercial properties from residential districts, and require commercial developers to make the property more attractive. Approving this site plan and approving the special permits requested only allows the Developer to make more profit at the expense of abutters. There is no good reason given by the Developer to refuse to down size this project to meet the Zoning Bylaw. This project could be built in complete compliance with the Zoning Bylaw with a shorter building, less square footage. Why is the Developer insisting on getting every square foot he can, and in doing so, not leaving enough space to landscape, screen and make the Project more attractive.**

Section 11.2421 The development shall be reasonably consistent with respect to setbacks, placement of parking, landscaping and entrances and exits with surrounding buildings and development.

**As has been reiterated numerous times herein, this Project is completely out of scale with the surrounding architecture. The Developer is attempting to avoid any meaningful landscaping and instead use the lot to the fullest extent rather than abiding by the rear and side yard requirements and making those areas green and attractive. The Project should be set back from East Pleasant Street and attractive sidewalk, green belt and lighting should be required.**

### **Conclusion**

The Amherst Planning Board may not grant a special permit that does not comply with the Amherst Zoning Bylaw. Guiragossian v. Board of Appeals of Watertown, 21 Mass. App.Ct. 111 (1985). The Special Permit application to waive the side and rear yard requirement pursuant to Section 6.15 does not comply with the Zoning Bylaw. The failure to include affordable housing within the Project does not comply with the Zoning Bylaw.

“Neither the Zoning Enabling Act nor the town zoning by-law gives the petitioner an absolute right to the special permit which they seek. The board is not compelled to grant the permit. It has discretionary power in acting thereon. The board must act fairly and reasonably on the evidence presented to it, keeping in mind the objects and purposes of the enabling act and the by-law.” MacGibbon v. Board of Appeals of Duxbury, 356 Mass. 638 (1970).

The Amherst Planning Board is not required to grant the Special Permit application to waive the maximum height requirement for the building. As detailed above, the applicant does not meet the special permit criteria detailed in Section 10.38, et seq., of the Zoning Bylaw. This Special Permit application should be denied as well.

Finally, because this plan does not fulfill the site plan review criteria of Section 11.2 of the Amherst Zoning Bylaw, the Project itself must be denied site plan review approval, as required by Section 11.2501 of the Bylaw.



EXHIBIT  
A

Town of



AMHERST

Massachusetts

**PLANNING BOARD**

**Report to Town Meeting**

**ARTICLE 22 INCLUSIONARY ZONING**

To see if the Town will vote to add a new Article 15, Inclusionary Zoning, and amend Article 12, Definitions, of the Zoning Bylaw as follows:

***SEE ATTACHMENT***

**Recommendation**

The Planning Board voted unanimously (8-0) to recommend that Town Meeting adopt Article 22.

**Summary**

Article 22 adds a new section (Article 15) to the Zoning Bylaw requiring the inclusion of affordable housing units in larger residential developments (10 or more units) regulated under Special Permits: apartments, townhouses, Open Space Community Developments (OSCDs), and Planned Unit Residential Developments (PURDs). This would not apply to smaller developments (1-9) units or to by-right development methods like standard subdivisions, cluster developments, or any non-profit residential developments. Affordable housing incentives and subsidized housing are dealt with separately under the Zoning Bylaw. The Planning Board is also considering other zoning amendments for the fall to address affordability in smaller (1-9 unit) housing developments, as well as incentives to provide more affordable units in larger developments than "inclusion" regulations would require.

**Background**

The need for additional affordable housing in Amherst is documented in the Town of Amherst Affordable Housing Plan: 2003 Update, which also discusses several strategies for providing additional affordable housing units through the permit process. At the request of the Amherst Housing Partnership/Fair Housing Committee, the Planning Board has been working with for more than a year on improvement to Amherst's zoning regulations to encourage the provision of affordable housing in new development. These efforts are in implementation of the Amherst Housing Policy, adopted by the Select Board on October 21, 2002:



*Whereas, the Town of Amherst values its diverse cultural community, and acknowledges that to sustain it now and into the future requires preserving the existing stock of housing and promoting future development of a broad range of safe, accessible, affordable housing for our community:*

*To this end, Amherst shall:*

- *Actively support initiatives designed to preserve, develop and/or replenish its affordable housing inventory;*
- *Actively promote access to housing for all persons, regardless of race, color, creed, national origin, sexual orientation, physical capabilities, marital or social-economic status;*
- *Commit resources to educating the public on all housing conditions, current housing laws and regulations, and enforce housing laws and protections within the community.*

The Planning Board is considering further affordable housing zoning amendments for the 2005 Fall Special Town Meeting.

All of the Planning Board zoning articles before the 2005 Annual Town Meeting involve residential development. Several encourage affordable housing. But Article 22 represents the most significant change—requiring the inclusion of affordable housing in selected new residential developments.

Inclusionary zoning is self-defining. It requires developers or property owners who are building more than a given threshold of new dwelling units to “include” affordable housing in specified amounts. Many Massachusetts communities have inclusionary zoning. Amherst has offered zoning incentives (density bonuses) for the inclusion of affordable housing in selected kinds of new residential development since the late 1980s, but has not previously required the inclusion of such housing.

#### **What Article 22 Does**

Article 22 seeks to establish a foundation—a baseline amount of affordable housing that must be provided as part of private housing developments, as follows:

***Provides A Local Preference*** – Article 22 states that, where possible, preference for ownership or lease of affordable units should be given to people who live or work in Amherst.

***Applies Only to Special Permit Developments*** – Article 22 requires affordable dwelling units for all residential developments requiring a Special Permit.

***Why Only Special Permit Developments?*** - Requiring private developers to pay for and provide public benefits when they develop has to be done carefully, to avoid exposing the regulations to successful legal challenge. Property owners are protected against unreasonable public “takings” of their property (or any interest in their property) by provisions of the Massachusetts Constitution and the Fifth Amendment to the U.S. Constitution, which reads, in part: “nor shall private property be taken for public use, without just compensation.” For that reason, Article 22 mandates the inclusion of affordable housing only for residential developments in Amherst that require a Special Permit.

In all zoning districts, there are residential development methods developers and property owners can pursue by right. So, if a developer or property owner *chooses* to pursue a residential development method that requires a Special Permit, then the Town is on sound legal ground to require that a reasonable amount of affordable housing be included as part of that development.

*Requires Inclusion for Larger Developments* – Article 22 requires the provision of affordable dwelling units in the following amounts:

- 1-9 units - Exempt—developments in this size range are usually not able to economically support the creation of an affordable unit.
- 10-14 units - A minimum of one (1) unit would have to be affordable.
- 15-20 units - A minimum of two (2) units would have to be affordable.
- 21+ units - A minimum of 12% of the units would have to be affordable
  - 21 total = 3 affordable units
  - 30 total = 4 affordable units
  - 38 total = 5 affordable units
  - 46 total = 6 affordable units, etc.

In practice, this means that only Special Permit housing development projects of 10 units or more permitted will be required to include affordable units under Article 22. These include apartments, town houses, Open Space Community Developments (OSCDs), and Planned Unit Residential Developments (PURDs). The Planning Board has also been examining the possibility of requiring standard subdivision to obtain Special Permits, and a related amendment may appear before Town Meeting in the fall. If that amendment proceeds, then standard subdivisions might also be required to provide affordable units under Article 22.

*Why Exempt Any Development? Why Not Ask For More?* – Again, Article 22 is only a first step to establish a baseline of required affordability, and it focuses on what the private housing market can reasonably do. In order to be legally defensible and to work in practice, a zoning requirement to include affordable dwelling units has to be reasonable and avoid being punitive.

If too many affordable units are required, projects will become vulnerable to legal challenge and could become economically infeasible for developers, who would then avoid using the development methods that require inclusion. Or, in a highly desirable housing market like Amherst's, developers might simply raise the price of the remaining market-rate dwelling units to cover the cost of the included affordable units. Amherst already suffers from excessively high housing costs. It makes no sense to create inclusionary zoning provisions that have the effect of making housing costs higher.

Finally, inclusionary zoning regulations cannot assume that public housing funding supports will always be available to help underwrite the cost of building affordable units that are required under regulations. A workable inclusionary zoning bylaw must be based on what the private housing market can support.



*Why a 10 Unit Threshold?* – Article 22 sets ten (10) units as the threshold for requiring affordable units, for several reasons. First, the majority of Massachusetts communities with inclusionary zoning regulations use a threshold of ten (10) total dwelling units before the first affordable unit is required. Some do so because it reflects their intention to create or maintain 10 percent of their community's housing as affordable, and thereby protect themselves from having Comprehensive Permit housing projects forced on them. A few communities set their threshold at 8 units, and some set the threshold higher—at 11, 12 or even 20 units.

Some rural communities allow no multi-family development, and their inclusionary thresholds are based on acreage, or on the number of proposed single family building lots. Some urban communities have no vacant land to speak of, and base their thresholds on new square footage (Cambridge, for instance, sets its threshold at 30,000 sq. ft. of developed area). A threshold of ten (10) units seems to match Amherst's housing market and its blend of rural and urban characteristics.

This inclusionary threshold reflects the real world. The number of housing units in a development has to reach a certain threshold before the return that a developer gets from selling the lots or houses can cover the costs they incur from purchasing land, preparing sites (grading, etc.) installing utilities, paving roads/driveways/parking areas, and so forth. If a community wants to successfully require private developers to include affordable housing, it has to take the developer's development costs into account.

*Interaction With Density Bonuses* – Article 22 presumes that Amherst wants affordable housing to be a normal, regular feature of all new residential development regulated through Special Permits. Currently, Amherst's Zoning Bylaw only offers density bonuses for the provision of affordable housing under one of its Special Permit residential development method—Open Space Community Developments (OSCDs). No density bonuses are currently offered for apartment or townhouse developments that include affordable units.

Cluster subdivision developments are not affected by Article 22, because clusters are permitted by right through Site Plan Review approval, not under a Special Permit. Any cluster development containing a minimum of ten percent (10%) of its units as affordable is eligible to use a different density calculation (see warrant Article 20), and all affordable units provided count toward that ten percent. Article 22 would not change this.

Open Space Community Developments (OSCDs) require a Special Permit and currently allow a density bonus of up to 20% increased density (unit count) when affordable units are included. To ensure that the inclusionary requirement is not a disincentive, the affordable units required to be included under Article 22 will count toward a density bonus in an OSCD.

### **Public Hearing**

The Planning Board held a public hearing for Article 22 on Wednesday, April 6, 2005. After discussion, the Planning Board voted unanimously (8-0) to recommend that Town Meeting adopt Article 22.

~ ATTACHMENT ~

**ARTICLE 22          INCLUSIONARY ZONING**

To see if the Town will vote to add a new Article 15, Inclusionary Zoning, and amend Article 12, Definitions, of the Zoning Bylaw as follows:

A.    Add the following new Article 15, Inclusionary Zoning:

**ARTICLE 15          INCLUSIONARY ZONING**

**15.0    INTENT & PURPOSE**

**15.1    REGULATIONS**

**SECTION 15.0      INTENT & PURPOSE**

The purpose of this Article is to promote the general public welfare, including but not limited to ensuring an economically integrated and diverse community, by maintaining and increasing the supply of affordable housing in the Town of Amherst. This purpose includes:

- 15.00 Ensuring that new residential development generates affordable housing as defined in Section 12.00.
- 15.01 Ensuring that affordable housing created under this section remains affordable over the long term, with the majority of such housing remaining affordable in perpetuity, except as may be otherwise required under state or federal programs.
- 15.02 Maintaining a full mix of housing types and unrestricted geographic distribution of affordable housing opportunities throughout Amherst.
- 15.03 To the extent allowed by law, ensuring that preference for new affordable housing is given to eligible persons who live or work in Amherst.

**SECTION 15.1      REGULATIONS**

To ensure the purposes of this section, the following regulations shall apply to residential development in Amherst:

- 15.10 All residential development requiring a Special Permit and resulting in additional new dwelling units shall provide affordable housing units at the following minimum rates:

<u>Total Development Unit Count</u>	<u>Required Affordable Unit Provision</u>
1-9 units	None*
10-14 units	Minimum one (1) dwelling unit
15-20 units	Minimum two (2) dwelling units
21+ units	Minimum 12% of total unit count



\* While provision of affordable units is not required for developments containing 1-9 units under this section, the Bylaw encourages affordability and provides for incentives. See Sections 4.33 and 4.55.

For developments of 21 or more total units, calculation of the number of affordable units shall, if the required percent of the total results in a fraction, be rounded up to the next whole number where the fractional portion is equal to 0.5 or greater, and shall be rounded down to the next whole number where the fractional portion is less than 0.5.

- 15.11 Affordable dwelling units are a normal and expected component of residential development in Amherst under a Special Permit. For this reason, affordable dwelling units provided under Section 15.10 shall not be counted as meeting the requirements for affordability density bonuses under the provisions of Section 4.550.0 (Open Space Community Developments) or any other applicable section. Eligibility for density bonuses under this Bylaw shall require the provision of additional affordable dwelling units above and beyond those required under Section 15.10.
- 15.12 The applicant shall establish such housing restrictions, conditions, and/or limitations as are necessary to ensure that the affordable housing units provided under this section will be permanently available for purchase by eligible low-and moderate-income buyers, and available for a minimum of twenty years in the case of rental housing.
- 15.13 Housing constructed by a public agency or non-profit corporation using a federal, state, or local housing assistance program may adhere to the requirements set forth by the funding agency provided that the purpose of these regulations are met.
- 15.14 In any residential development, affordable housing units provided shall be dispersed throughout the development, and shall be comparable to market rate units in terms of the quality of their design, materials, and general appearance of their architecture and landscape.

**B. Amend Article 12, Definitions, by adding the following new language under Section 12.00, and renumbering the remaining sections accordingly:**

- 12.00 *Affordable Units: Affordable housing units shall be those which may be rented or purchased by those who meet the guidelines for maximum annual income for a low-income or moderate-income family or household. The income limit for "low income" shall be 80% of the median income for Amherst, and the income limit for "moderate income" shall be 120% of median income for Amherst. Median income for Amherst will be as calculated by the U.S. Department of Housing and Urban Development, or any successor agency, and shall be adjusted for family size.*

EXHIBIT  
B



To the Planning Board  
Town of Amherst

The two Special Permit requests from Archipelago Investments, LLC of Amherst Massachusetts for the property at One East Pleasant Street, Amherst must be denied under Section 10.38 of the Amherst Zoning Bylaw as well as under the specific sections of the bylaw related to dimensional requirements and coverage. The by-right use then also must be denied because the applicant has not demonstrated compliance with the Amherst Zoning Bylaw as required by Section 11.2500: that the proposal meets all the requirements of Section 11.2.

DIMENSIONAL REGULATIONS for MAXIMUM BUILDING COVERAGE, MAXIMUM LOT COVERAGE, MAXIMUM NUMBER OF FLOORS AND MAXIMUM HEIGHT [Table 3] are qualified by Footnote *a* whereby the Planning Board must find that "The proposal does not create disharmony with respect to . . . the use, scale and architecture of existing buildings in the vicinity which have functional or visual relationship thereto." [10.395] The applicant has not shown that a five story building 60 feet high fits in "the context of the patterns of the same dimensions established by existing [one-story and two-story] abutting buildings . . . ." Nor has the applicant shown that a large densely packed warren of relatively small rental units is compatible in function with and will not unduly disrupt existing nearby businesses. No evidence has been presented to allow the finding under Section 10.380 that the project is suitably located in a neighborhood of small locally-owned shops.

The height of a building in the BG Zoning District is limited to 55 feet [Table 3] with **no** footnote allowing modification in the column under BG zoning district, although the row references Footnote *n* as well as *a*. Since Footnote *n* refers us to Section 6.19 which does not exist in the most recent edition of the bylaw, perhaps one can assume the current section 6.171 provides the needed criteria. The burden of proof is on the applicant to demonstrate the "compelling reasons of building function, utility or design . . . allowing construction under difficult site conditions . . . [considering] the height and roof styles of existing buildings, structures . . ." that these modifications are needed. Because the applicant has not demonstrated such "compelling reasons" nor provided convincing evidence that the proposal meets the criteria of Footnote *a* and Section 10.395, the discretionary Special Permit must be denied.

The MAXIMUM LOT COVERAGE of 70% is also qualified by Footnote *a*. The only comparable residential properties in the "surrounding neighborhood" downtown are the Ann Whelan and Clark Houses. Both required a Special Permit or Comprehensive Permit and comply with the coverage limit. Both also have beautiful and well-maintained landscaped yards and adequate parking for their residents. The applicant has not demonstrated that increasing the coverage complies with the requirements of Section 10.395 noted, having given the Board no reasons for allowing this exception.

The March 2013 Gateway Traffic Study indicates a potential impact from this project. The applicant has not demonstrated that the circulation system on-site and the entrance/exit onto East Pleasant Street will not be hazardous for pedestrians and drivers on the main thoroughfare nor that it will not further exacerbate traffic tie-ups at the Triangle Street intersection. Since the March 2013 Study assumes a total of only 48 condo units in the future build-out of the area, the impact of these 78 apartments with 180 additional bedrooms to be constructed in this single project alone is unknown. In this circumstance Section 10.387 allows the Board to require a traffic impact report. Likewise the requirement under Section 10.383 that the proposal not be an inconvenience or hazard to abutters, vehicles or pedestrians has not been demonstrated.

The applicant has not identified where vehicles can park while loading and unloading during heavy move-in times of May and September. How will this process impact other activities in the downtown, neighboring



commercial activity, and traffic flow on the main artery through the town? Will Archipelago tenants be using abutting private parking lots while unpacking and packing their vehicles?

Sections 10.384 and 10.389 require adequate space in the project or on site for the usual daily amount of trash and recycling but also must provide for larger volumes as well as used furniture left by departing tenants. Three hundred fifty square feet is not adequate and nor is provision made in the Management Plan for removal of large items left behind. No on-site management of tenant decorum nor protection of Kendrick Park from tenant-related activity which is required by Section 10.391. We do not know who will be managing this complex once it is built. Will it remain local or sold to a Real Estate Investment Trust or similar entity which is more interested in investor profits than the Town of Amherst?

The largest of the LEED certified “high quality apartments” is only 1150 square feet in size, too small for family living, and not inexpensive to rent. As the Archipelago website stresses its niche market is research university communities, one must assume that the niche market here is undergraduate students. That being the case, Section 7.43 specifies that dormitories or similar college residence halls must meet the parking requirement of this bylaw: that is, provide two parking spaces per unit. Amherst is NOT Boston! It is ludicrous to believe that tenants won’t have cars, that they won’t need to leave our wonderful town for shopping, medical appointments or amenities of city life not available here. What public transportation is available becomes problematic on weekends, the three summer months and during winter break when the student population is gone. It has been my experience over forty years of property management in Amherst that most students require their own cars for transportation to jobs if for nothing else. And these cars will be parked in one of the private downtown lots depriving patrons of these merchants a parking spot proximal to their destinations.

Section 15.10 is unequivocal in stating “all residential developments requiring a Special Permit and resulting in additional new dwelling units . . . **shall provide** affordable housing units . . .” Nine are required in this case. Inferring any “intention” of Town Meeting when it passed Article 15 is not looked on favorably by our courts when there is clearly no ambiguity in the language. Whether the special permit is for the residential use or something else is irrelevant. Since the Special Permit is discretionary, the applicant can be absolved of compliance under 15.10 if the height and coverage are reduced.

The above reasons support the conclusion that the project at One East Pleasant Street as presented does not comply with many requirements of the Zoning Bylaw as well as the goals of the Master Plan. It fails to “Maintain Amherst’s existing community character” by not “protecting and promoting adaptive reuse of historic buildings, and landscapes,” and does not adhere to “design standards to ensure new development is in accord with existing neighborhood character” (Master Plan page 2.3). Instead it proposes a tall bulky student apartment sky-scraper that would loom over and dominate the much smaller scale buildings around it. It fails to “Encourage vitality in the downtown and village centers (Master Plan page 2.3) or support sustainable growth of existing businesses (Master Plan page 2.7), instead eliminating more than a dozen locally-owned small businesses—some having existed in the Carriage Shops for more than forty years--providing employment to local residents.

Hilda B. Greenbaum, Ph. D.

298 Montague Road

North Amherst Sixty year resident of the Valley, 53 in Amherst

Town Meeting member Prec. 1 (1975 to the present)

Zoning Board of Appeals (2005-2013 and former Vice Chair)

<sup>1</sup> Oxford English Dictionary defines “consider” as taking into account when making an assessment or judgment. “Shall ” makes this action mandatory.



# EXHIBIT C

# Exhibit C

## Amherst Center Tail Buildings per J. Tucker



- Property Map**
- Property Line
  - Hydrographic Property Line
  - Right of Way Line
  - Town Boundary
  - Lot Lines
  - Former Property Line
  - Subdivision Lot Line
  - Easements
  - Adjacent Towns Parcels
  - Basemap 2003
  - Trails
  - Rail Lines
  - Structures
  - Building
  - Foundation or Construct.
  - Outbuilding or Misc.
  - Deck, Porch, Stairs
  - Mobile home, Trailer
  - Swimming Pool
  - Building Ruins
  - Water storage tank
  - Rivers and Streams
  - Streams
  - Major Culverts
  - Hydro Connector
  - Headwalls, Floodwalls
  - Landcover
  - Brush & Scrub Vegetation
  - Tree & Forest Vegetation
  - Cultivated field
  - Gravel pit
  - Crusher
  - Misc Impervious Surface
  - Sidewalks

Horizontal Datum: MA Stateplane Coordinate System, Zone 4151, NAD83, Feet; Vertical Datum: NAVD83, FT  
Planimetric & topographic basemap compiled at 1"=40' scale from April, 2003 Aerial Photography, Parcels compiled to match the basemap; revisions are ongoing.

The information depicted on this map is for planning purposes only. It may not be adequate for legal boundary definition, regulatory interpretation, or property conveyance purposes. Utility structures & underground utility locations are approximate & require field verification.

The Town of Amherst makes no warranties, expressed or implied, concerning the accuracy, completeness, reliability, or suitability of these data, & does not assume any liability associated with the use or misuse of these data.



1" = 450 ft

amherstma.gov/maps November 11, 2014





EXHIBIT C:

Floors and Approximate heights of Taller Buildings in and around Amherst Center (from J. Tucker memo, October, 2014). Added are the approximate distances in feet from 1 E. Pleasant St. and the letter designations on the accompanying map.

BUILDING	LETTER	NUMBER	APPROX.	AVERAGE	DISTANCE (Feet)
	CODE	FLOORS	HEIGHT	FLOOR	FROM 1 E. PLEASANT
			(Feet)	HEIGHT (Feet)	1 E. PLEASANT*
Town Hall	A	4	66	16.5	1175
First Cong. Church	B	NA	64 ft. north	NA	1490
			façade		
			74 ft. west		
			façade		
Clark House (residential use)	C	6	57	9.5	773
Kendrick Place (as approved)	D	5	57	11.4	675
Ann Whalen Apartments	E	5	48-52	9.6-10.4	560
Boltwood Place	F	5	49.67	9.9	1050
Amherst Police Station	G	3 N. side	54	18	1485
Grace Episcopal Church	H	NA	52 West	18	1826
			façade		
Bank Block	I	4	52	13	1564
(63-71 S. Pleasant)					
79 South Pleasant St.	J	3	45	15	1851
(former Baptist Church)					
Tucker-Taft Building	K	3	42	14	1233
St. Brigid's Church	L	NA	50	NA	412
Jones Library	M	3.5	54	15.4	1366
Hasting's Block	N	3	44	14.7	1405
Cook's Block	O	3 South	42	14	1013
		4 north	54	13.5	
		façade			
Lincoln Building	P	3	43	14.33	985
College Hall	Q	NA	52	NA	2200

\* nearest point to nearest point as  
measured on GIS map with map tool.  
(450 feet/inch)

# EXHIBIT D



29 September 2014

David Webber, Chair, and Members, of the  
Town of Amherst (MA) Planning Board

Re: 1 East Pleasant Street as "Economic Development"

Dear Chairman Webber and Members of the Town of Amherst Planning Board:

There are at least three components that comprise the economic impact of 1 East Pleasant Street: retail space, jobs and property tax revenues. Each deserves to be explored separately.

**Retail Space.** Calculating total square footage and valuation of the existing retail/ commercial condo space in the Carriage Shops from the Amherst Assessors Office's property tax cards (attached), the property's existing total square footage and property tax valuation is as follows:

address	condo #	sq feet	a-value	owner
233 North Pleasant	1	338	40,800	Kay Baker, Baker, Kay Trustee
233 North Pleasant	2-3	338@	48,500.@	Robert P. Marcellino, et al
233 North Pleasant	4-8	338@	48,500.@	Amherst Carriage Shops, LLC
233 North Pleasant	9-10	338@	48,500.@	King, Frederick L. & Fikriye
233 North Pleasant	10-21	338@	48,500.@	Amherst Carriage Shops, LLC
233 North Pleasant	22-40	338@	44,900.@	Amherst Carriage Shops, LLC
233 North Pleasant	41-42	338@	44,900.@	Demers Family Realty, LLC
233 North Pleasant	43	589	73,100.	Demers Family Realty, LLC
233 North Pleasant	44	930	126,200.	Demers Family Realty, LLC
233 North Pleasant	45	900	117,100.	SCS Investments, LLC, ! E. Pl.
233 North Pleasant	46	960	123,600.	SCS Investments, LLC, ! E. Pl
1 East Pleasant	47	600	76,100.	Amherst Carriage Shops, LLC
1 East Pleasant	48	600	75,400.	Amherst Carriage Shops, LLC
5 East Pleasant	49	1,339	95,200.	Ritchie, Robert W. & Jean M..
5 East Pleasant	50	864	69,500.	Ritchie, Robert W. & Jean M..

Based on the table above, the Carriage Shops presently provide 20,978 square feet of landscaped, downtown, 12-month retail/commercial space with 36 customer parking spaces. In contrast, 1 East Pleasant Street proposes to provide about one-third of the now-existing retail/commercial space, 7,500 square feet, with no landscaping and zero customer parking.

If one discounts by 7/12 that 7,500 square feet, given that 1 East Pleasant Street's retail spaces will likely primarily serve the 7-month dining commons, laundry, Asian restaurant, pizza, alcohol consumption, etc., needs of its residential occupants, then the year-round net retail space will amount to 4,375 square feet, 21% of what the Carriage Shops now provide.

**Jobs.** For most of the 20th century, economic development meant creating long-term jobs. 1 East Pleasant Street may create some short-term construction jobs, which are more likely to involve disruption than benefit to downtown Amherst's daytime economy. What is indisputable is that long-term, given what we already know, if the Carriage Shops disappear, there will be a net loss of between 6-10 retail businesses and between 15-30 full-time-equivalent jobs.

**Property Tax Valuation.** The FY 2015 property tax valuation of the Carriage Shops retail/commercial condos, derived from the Town of Amherst Assessors Office's property tax cards, presently amounts to \$2,758,400.

If the Carriage Shops were demolished and the landscaping and parking spaces removed, the assessed value of that property would consist of the land value alone for as long as the land remained vacant. (If, after demolition of the Carriage Shops, the economy tanked and the owners of the now vacant land filed for bankruptcy, the property could remain vacant for decades, as have other properties in town.)

Once construction of a replacement structure begins, the property would be valued for each fiscal year based on the July 1st value of the land plus the actual value of any improvements in place on that date. When a replacement structure is in place and has been fully cleared by the town's Inspection Services and Fire Departments and given a Certificate of Occupancy by the Building Commissioner, the new building would be added to the property tax rolls using not its actual value but assessing it by the income method.

Valuing a 1 East Pleasant Street building by the income method would be consistent with the process used to value most commercial real estate, including all of the town's apartment complexes and buildings. This differs from assessing by replacement, construction or sale value, used for single-family homes.

Finally, and most important, once 1 East Pleasant Street was in operation for a few years, nothing would prevent the owners from selling the building – and Kendrick Place and Olympia Place – to large national or multi-national predatory management organizations.



Vincent O'Connor  
175 Summer Street #12  
Amherst MA 01002  
413/549-0810



# EXHIBIT E

26 September 2014

David Webber, Chair, and Members of the  
Town of Amherst Planning Board  
Town Hall  
Amherst MA 01002

Re: 1 East Pleasant Street; SPP2015-01, SPR2015-03

Dear Chairman Webber and Members of the Town of Amherst Planning Board:

For the Board to be able to properly evaluate the adequacy of the facilities designed to serve future residents of this proposed building – who are far more likely to be college students than retirees of the Little Sisters of the Poor – the Planning Board should try to come to its own independent conclusion about how many people will live in this building. Please, therefore, consider the following:

	number of units	total bdrms	applicant's occupancy estimates	real world occupancy estimates	fire safety egress occupancy
1-bdrm units	32	32	32	48-64	96
2-bdrm units	18	36	36	54-72	72
4-bdrm units	28	112	112	140-168	168
<b>totals</b>	<b>78</b>	<b>180</b>	<b>180</b>	<b>242-304</b>	<b>336</b>

The Amherst Building Commissioner's calculations for fire safety egress are based on an officially mandated determination that in such structures there would be one occupant for every 200 square feet of habitable space or majority portion thereof. Each proposed 1-bedroom unit shows 520 square feet; 2-bedroom units, 800 square feet; 4-bedroom units, 1150 square feet.

The adequacy of facilities such as: parking; open space; trash, recycling and used furniture handling; move-in and move-out staging areas, etc., are dependant on fair but realistic, independently arrived at Planning Board estimates of the number of likely regular building occupants. I hope the above information will be helpful to the Board in making those determinations. Sincerely,



Vincent O'Connor  
175 Summer Street #12  
Amherst MA 01002  
413/549-0810



# EXHIBIT F

Planning Board

Amherst, MA

October 1, 2014

There are many problems inherent in constructing a very high density 5 story dormitory in the center of Downtown Amherst, especially one with no available open space; as we will learn from the new Kendrick Place Building upon its occupancy.

Aside from the proposed 1 East Pleasant Street standing out like a sore thumb, aside from the police activity, noise and traffic it will generate; where will all the mini vans and U-Haul's park on move in day? How is a building this large going to handle the massive amounts of trash generated every day? On move out day, where are the hundreds of students going to pile their unwanted furniture, dorm fridges, trash and debris? On the sidewalks.

The list of problems goes on, but the most immediate problem, one I deal with every day as an in town abutter, is illegally parked cars. I own 2 properties nearby; 274 North Pleasant Street and 15-17 Hallock Street. Monitoring these parking lots in order to maintain available spots for the tenants who pay rent for their apartment/office and respective parking spaces has become a part time job. The parking problem in town will worsen when the Kendrick Place Building opens for business, and become impossible if the 1 East Pleasant Street proposal is approved.

My proposal is to deny this application and perhaps encourage the developers to design a building that suits the needs of the 12 month residents and business owners of Amherst. Perhaps a renovation of the existing buildings, or a scaled down proposal that matches local architecture and includes a first floor of small businesses similar to Thornes Market or the existing Carriage Shops. Look how successful the Amherst Cinema Building turned out, a real destination. The Town of Amherst is in desperate need of high quality office space. Why not design the second floor as office space? Most importantly, there would need to be adequate available parking which would entice people to come to these stores and not frequent the malls.

It would be nice to build an attractive building that suits the needs of the town's year around residents, and not the needs of the developer. Fewer adults go out in Amherst; they go out in Northampton where there is more variety and more parking. Approving this out of place dormitory will worsen this dire situation.

Joel Greenbaum

Abutter